

### **REMARKS/ ARGUMENTS**

Claims 1-39 and 45-50 remain in this application. Claims 40-44 have been withdrawn as a result of an earlier restriction requirement. Claims 28-34 are withdrawn from consideration as a result of an earlier election of species.

#### **Rejections under 35 U.S.C. §102(e)**

Claims 1-5, 7, 9-22, 24-27, 35-39, and 45-50 are rejected under 35 U.S.C. §102(e) as being anticipated by Brown et al. (U.S. Patent Application Publication No. 2002/0005051). Reconsideration of this rejection is respectfully requested.

The subject matter in Brown et al. relied on in the 102(e) rejection is use of silicon tetrakisocyanatosilane ( $\text{Si}(\text{NCO})_4$ ), a pseudohalogen, as a silica precursor for making silica through delivery of the silica precursor to a conversion site and passing of the silica precursor through a flame. Brown et al. do not claim use of  $\text{Si}(\text{NCO})_4$  as a silica precursor for making silica through delivery of the silica precursor to a conversion site and passing of the silica precursor through a flame.

In the attached declaration, Joseph M. Whalen, a named inventor in the above-identified application, states unequivocally that he invented or conceived use of  $\text{Si}(\text{NCO})_4$  as a silica precursor for making silica through delivery of the silica precursor to a conversion site and passing of the silica precursor through a flame. Therefore, the subject matter in Brown et al. relied on in the rejection is not an invention by another. Therefore, Brown et al. is disqualified as a reference against the claims under 102(e). Withdrawal of the rejection of claims 1-5, 7, 9-22, 24-27, 35-39, and 45-50 in view of Brown et al. is requested.

#### **Rejections under 35 U.S.C. §102(e)/103**

Claims 1-27, 35-39, and 45-50 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brown et al. in view of Brown et al. (U.S. Patent 6,378,337). Reconsideration of this rejection is respectfully requested.

As stated above, Brown et al. is disqualified as a reference against the claims under 35 U.S.C. §102(e). The '337 patent does not teach use of a pseudohalogen as a silica precursor.

Therefore, claims 1-27, 35-39, and 45-50 are patentably distinguishable over the '337 patent. Withdrawal of the rejection of claims 1-27, 35-39, and 45-50 is requested.

### **Conclusion**

The rejected claims have been shown to be allowable over the prior art. Applicants believe that this paper is fully responsive to each and every ground of rejection cited by the Examiner in the Office Action designated as Paper No. 8, and respectfully request that a timely Notice of Allowance be issued in this case.

A petition under MPEP §710.06 to reset period for reply to three months from July 18, 2003, due to late receipt of office action was filed in the above-identified application on July 29, 2003. Applicants believe that the petition would be granted and that no time extension fee would be necessary to file this response. However, should the Patent and Trademark Office determine that a fee is necessary for filing this response, the Patent and Trademark Office is authorized to charge any necessary fee or surcharge to the Deposit Account 03-3325.

Respectfully submitted,

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